Comments on Draft AB901 DRS Regulations

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By Deidra Dingman, Contra Costa County Department of Conservation & Development
dding@cd.cccounty.us | 925-674-7825

Section X.1 Scope and Purpose.

Per AB901, these new regulations should not reduce or eliminate existing data reporting/access authority granted to CalRecycle or local jurisdictions. Since these regulations are proposed to replace the existing Disposal Reporting System regulations, Subsection (a) needs to acknowledge that this Article is also intended to implement PRC Sections 41821.2 and 41821.3.

Additional provisions need to be included in subsequent section(s) to address PRC Section 41821.2 (which is already mentioned in the Scope & Purpose of the existing DRS Regs) which states in part:

> (a) For the purposes of this section, "district" means a community services district, public utility district, or sanitary district that provides solid waste handling services or implements source reduction and recycling programs.
> (b) Notwithstanding any other law, each district shall do all of the following:
> (2) Provide each city, county, or regional agency in which it is located, information on the programs implemented by the district, the **amount of waste disposed and reported to the disposal tracking system pursuant to Section 41821.5 for each city, county, or regional agency, and the amount of waste diverted by** the district for each city, county, or regional agency.
> (c) The **board may adopt regulations pertaining to the format of the information to be provided pursuant to paragraph (2) of subdivision (b) and deadlines for supplying this information to the city, county, or regional agency, so that it may be incorporated into the annual report submitted to the board** pursuant to Section 41821.

Additional provisions need to be included in subsequent section(s) to address PRC Section 41821.3(c)(2) which states in part:

> "The board shall verify that the [inert waste] deduction made pursuant to paragraph (1) is consistent with the requirements of this section and the amount deducted is **consistent with the amount reported through the board's disposal reporting system**. The board shall approve the deduction made by the jurisdiction upon making this verification."

...as well as PRC Section 41821.3(c)(3) which states:

> "If the board finds that the amount deducted pursuant to paragraph (1) does not meet the requirements of this section, or if the amount deducted is not consistent with the **amount reported through the board's disposal reporting system**, the board shall notify the jurisdiction of its preliminary determination and confer with representatives of the jurisdiction to reach an agreement regarding the amount of the deduction. If the jurisdiction agrees upon the amount of the deduction, the board shall approve the deduction as modified. If the board and the jurisdiction are unable to reach agreement upon the amount of the deduction, the jurisdiction may request a hearing before the board to obtain a final determination."

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Section X.2 Definitions.

Need to retain the following definition currently in the DRS Regulations, because Counties will continue to need this authority to require Landfills to submit this information annually so that it can be used to calculate remaining disposal capacities for including in our jurisdictional electronic annual reports due to CalRecycle each August.

> **"Airspace utilization factor"** (AUF) (tons of waste per cubic yard of landfill airspace) means the effective density of waste material in the landfill. The AUF is recorded as the total weight of waste material passing over the landfill scales that is placed in a known volume of landfill airspace in a given time period. The waste portion of the AUF should include only waste material for which payment of fees to the Board is reported.

The definition of **"Reporting Entity"** and/or **"Haulers"** needs to be revised because currently Haulers are included as Reporting Entities, however the definition of "Haulers" includes "Self-haulers" which are not intended to be Reporting Entities.

There are quite a bit of Haulers which operate throughout the Bay Area that don't have contracts or franchises because it isn't required (like a junk removal service, C&D haulers, e-waste companies that target neighborhoods and put out flyers announcing the day) or they are operating illegally. These would all fall under the **"Self-hauler"** definition as it currently is written. The definition of self-hauler is too broad and should be revised if not intended to include/cover hauling by e-waste collectors, local charities, junk removal services, site clean-up services, contactors, landscapers or independent haulers (which may or may not be subject to local hauler permitting requirements).

The definition of **"Soil"** should be revised to clarify what level of contaminated soil qualifies as soil vs. what level is classified as "Designated Waste".

Not all waste received at transfer stations end up being recycled or composted, so the definition of **"Transfer station"** should be revised to include disposal so that the end would read as follows: "waste and/or materials for recycling, composting or disposal."

Section X.4 Reporting Requirements for Haulers.

Section X.4 should require that all disposed residuals be allocated to their jurisdictions or origin. Local jurisdictions need to have a means of accessing/scrutinizing the data that CalRecycle will rely on to assign disposal amounts to their jurisdiction, including any disposed residuals that have been allocated by origin or to host jurisdiction. This would eliminate the added burden on CalRecycle and local jurisdictions for having to address reallocation of residual waste via Disposal Modification process.

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Section X.4 (a)(2) should say "jurisdiction" and not "source sector".
Existing DRS Regulations do not require that Source Sector be tracked/reported and AB901 does not provide the statutory authority needed to adopt new regulations that require Source Sector to be reported by operators. Suggest that CalRecycle staff reconsider retaining more of the existing requirements applicable to Haulers as an alternative means to obtain as much data as possible from the widest range of haulers, which will have to suffice in place of Source Sector data unless Operators are willing to report that voluntarily.

Section X.4 (3)(1) is not helpful or adequate for a couple of reasons. First, jurisdictions are limited in the types of requirements we can impose through local ordinances. Second, jurisdictions do not have the right to add new requirements to existing agreements/contracts unless agreed to by the other party. Third, jurisdictions often have no contracts or permits governing a range of hauling activities including self-haul by property owners as well as landscapers, property clean-up/junk removal, etc.

Section X.4 should provide **explicit authorization for jurisdictions to require more if deemed necessary to ensure proper identification and reporting of waste origin**.

Section X.5 Reporting Requirements for Transfer Stations and Material Recovery Facilities

If residuals are going to continue being allocated to the host jurisdiction of regional diversion facilities by default, Section X.5 needs to clearly state that MRFs are required to **allocate residual by jurisdiction of origin** if disposing of more than 10 tons of residual per quarter (similar to the registration/reporting threshold and not 100 tons per month). Should also specify that if the MRFs have information on how clean the streams are from different jurisdictions, they can adjust accordingly. Otherwise they can allocate proportionally to the incoming tons. However, residuals need not be allocated by jurisdiction or origin if disposed residual is exempt from being assigned to any jurisdiction.

In order to improve the accuracy of origin data reported by one of our local TS we have instituted local process involving verification of address data for loads accepted during each quarterly survey week. Local cities strongly oppose eliminating a means for facilities to use **sampling method** where such improves the accuracy of origin tracking/reporting. Cities will again be faced with misallocated disposal that may compromise their diversion/disposal rates if Landfills/Transfer Stations are not allowed to relying on data collected survey week (and verified/corrected with the help of local agencies) for the purpose of allocating quarterly tonnage to jurisdictions of origin.

More often than CalRecycle staff apparently realize self-haulers and non-contract haulers (especially non-franchised haulers hired by generator) are known to transport loads they are **reluctant to provide origin** for because they know they didn't have the right to collect

(poaching in franchise area served by an affiliate of the same company that operates the receiving transfer station), they're concerned about others stealing their customers, thinking that they will be charged differently, or concerned about prompting further scrutiny/investigation. It would be better to have Haulers report to an entity other than the receiving facility, such as Haulers reporting directly to CalRecycle.

Due to our experience gained over the course of the past 10+ years, it is clear that the vast majority of inaccurately reported jurisdiction of origin data (including multiple loads reported as "UNKNOWN") are attributable to self haulers. Local agencies have no means of imposing requirements on self haulers via permits/contracts as we do with the companies designated to provide routine collection service/curbside collection. Self haulers include contractors and landscaping companies who actually have loads that originated from more than one jurisdiction even though the vast majority only identify one jurisdiction. These factors can really add up to substantial quantities which represent a significant potential problem for an agency like ours who is a **host jurisdiction** to multiple TS and LFs, including one where self hauled tonnage represents 25% of waste transferred for disposal (which happens to be where we go through survey week address verification process to improve accuracy). What is the basis (statutory authority) for assigning waste to host jurisdictions?

Pursuant to PRC Section 41821.5(b)(3) this and any other applicable Section of the new Regulations should clearly state that CalRecycle may **provide confidential information to jurisdictions, aggregated by company, upon request** even though that level of detail is not public information.

Data that is reported which can be used to verify/determine the **diversion rate for mixed C&D material stream processed at facilities** should be available to jurisdictions upon request to aid in monitoring/enforcing CalGreen requirements which are increasing from 50% to 65% as of January 2017.

Transfer stations (and maybe other types of facilities too) often charge some customers based on estimated volume of incoming loads (cubic yards) and others are based on weight of incoming load (tons), however outgoing loads sent for disposal/recycling are usually tracked by weight (however weight of outgoing load using scales at the TS may differ from the weight of incoming load using scales at the LF). Those **facilities should not convert volume to yards** but should instead be required to calculate separate % allocations for incoming volume vs. weight so that it can be applied to applicable proportion of outgoing tons. This is how that is done for data reported by a local TS:

1. Determine total amount of outgoing tons for the reporting period (Total Quarterly Tons)

2. Subtract from that the amount of incoming tons for loads charged based on weight, which should be allocated based on the % per jurisdiction applicable to the incoming loads charged based on weight (Quarterly Tons by Weight)
3. Remainder tonnage represents incoming that was charged based on volume, which should then be allocated based on the % per jurisdiction applicable to the incoming loads charged based on volume (Quarterly Tons by Volume)

Section X.6 Reporting Requirements for Disposal Facilities

Section X.6 needs to specify that disposal facility operators must submit information about **disposal tonnages by origin to counties that request such** in the form prescribed by CalRecycle.

Modify Section X.6 to require that landfills continue providing the type of disposal reporting data currently available to and needed by jurisdictions in order to **substantiate claims for disposal credits via Disposal Modification** (e.g. disaster waste, C&D, Class II wastes, etc.) and complete Annual Report, consistent with the current DRS Regulations.

Section X.7 Reporting Requirements for Recycling and Composting Operations

If residuals are going to continue being allocated to the host jurisdiction of regional diversion facilities by default, Section X.7(a)(1)(B)(ii) and the other applicable Sections should be revised to state that **jurisdiction of origin allocations for residual** sent for disposal is required to be reported when sending more than 10 tons per quarter for disposal rather than 100 tons per month. Regs should also specify that if the Facility has information on how clean the compostable waste streams are from different jurisdictions, they can adjust accordingly. Otherwise they can allocate proportionally to the incoming tons. However, residuals need not be allocated by jurisdiction or origin if disposed residual is exempt from being assigned to any jurisdiction.

Pursuant to PRC Section 41821.5(b)(3) this and any other applicable Section of the new Regulations should clearly state that CalRecycle may **provide confidential information to jurisdictions, aggregated by company, upon request** even though that level of detail is not public information.

Section X.9 Procedure for Imposing Civil Liabilities

Enforcement would be more effective if Regs will **require Haulers to report directly to CalRecycle** in addition to the receiving facilities.

- Are the **facilities expected to advise CalRecycle each and every time** a Hauler comes to their facility and does not submit the required reports or the reports that they do submit are late, incomplete or inaccurate?
- If so **what evidence would be required to impose penalties** and how long would that process take?

The enforcement provisions **should not dictate or rely on private sector haulers/facility operators as the primary means of identifying non-compliant operators**. This is a real potential problem (weak point) in reporting system design and will most certainly ensure a significant number of reporting violations will go undetected, potentially indefinitely. For that reason, this design flaw needs to be addressed to avoid compounding the potential misreporting of jurisdiction of origin (significant area of concern for a County like ours which is the host jurisdiction to numerous facilities):

- Too burdensome to gather/communicate details to CalRecycle
- Desire not to "snitch" on their revenue producing customers or sister companies
- Easy to fill in blanks in Hauler reported data with guesses or host jurisdiction

Section X.10 Record Retention Requirements for a Reporting Entity.

Section X.10(b)(4) requirement regarding weight tags should **specify "waste type"** because "type" is unclear, which includes distinguishing tonnage of waste types eligible for disposal credits (e.g. Designated or Class II Wastes, C&D from State/Federal Agency projects, Disaster Wastes, etc.).

Section X.10(b)(4) should also specify requirement that they **identify "unit of measure"** not just "quantity"

Section X.11 Record Review Requirements for a Reporting Entity.

Regs should be revised to reflect that PRC Section 40062 grants CalRecycle the statutory authority to release information that is submitted and **designated as a trade secret but only to public agencies that request such for use in making reports.** Annual Reports/Disposal Modification Requests offer a valid basis for local agencies to request and be provided with jurisdiction specific facility and tonnage data submitted by operators pursuant to the new AB901 Regs.

Local jurisdictions **rarely have separate local authority over facilities located in other jurisdictions**, additionally there are numerous scenarios where even host jurisdictions have no authority to require disclosure of information. Facility operators have disclosed data upon request due to existing DRS regs (maybe part of the changes that took effect in 2005-06) and it

is important that jurisdictions continue having access to that same data when regs are updated per AB 901.